




State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

Appendix A ... segment IV

LRB BILL HISTORY RESEARCH APPENDIX

 The drafting file for 2009 LRB-0141 (For: Rep. Cullen)


has been transferred to the drafting file for

2011 LRB-2366 (For: Rep. Cullen)



RESEARCH APPENDIX -
PLEASE KEEP WITH THE DRAFTING FILE

Date Transfer Requested: 07/12/2011 (Per: PJK)

 The attached draft was incorporated into the new draft listed above. For research purposes the attached materials were added, as a appendix, to the new drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX -
PLEASE DO NOT REMOVE FROM DRAFTING FILE

Date Transfer Requested: 09/08/2008 (Per: PJK)



☞ Appendix A ... Pt. 02 of 05

☞ The 2007 drafting file for LRB-2609

has been transferred to the drafting file for

2009 LRB-0141

☞ This cover sheet, the final request sheet, and the final version of the 2007 draft were copied on yellow paper, and returned to the original 2005 drafting file.

☞ The attached 2007 draft was incorporated into the new 2009 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2009 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

[ARTICLE] 2

SECURED CREDITOR TO RECORD SATISFACTION; LIABILITY FOR FAILURE

SECTION 201. PAYOFF STATEMENT: REQUEST AND CONTENT.

(a) An entitled person, or an agent authorized by an entitled person to request a payoff statement, may give to the secured creditor a notification requesting a payoff statement for a specified payoff date not more than 30 days after the notification is given. The notification must contain:

- (1) the entitled person's name;
- (2) if given by a person other than an entitled person, the name of the person giving the notification and a statement that the person is an authorized agent of the entitled person;
- (3) a direction whether the statement is to be sent to the entitled person or that person's authorized agent;
- (4) the address to which the creditor must send the statement; and
- (5) sufficient information to enable the creditor to identify the secured obligation and the real property encumbered by the security interest.

(b) If a notification under subsection (a) directs the secured creditor to send the payoff statement to a person identified as an authorized agent of the entitled person, the secured creditor must send the statement to the agent, unless the secured creditor knows that the entitled person has not authorized the request.

(c) Within 10 days after the effective date of a notification that complies with

subsection (a), the secured creditor shall issue a payoff statement and send it as directed pursuant to subsection (a)(3) in the manner prescribed in Section 103 for giving a notification. A secured creditor that sends a payoff statement to the entitled person or the authorized agent may not claim that the notification did not satisfy subsection (a). If the person to whom the notification is given once held an interest in the secured obligation but has since assigned that interest, the person need not send a payoff statement but shall give a notification of the assignment to the person to whom the payoff statement otherwise would have been sent, providing the name and address of the assignee.

(d) A payoff statement must contain:

(1) the date on which it was prepared and the payoff amount as of that date, including the amount by type of each fee, charge, or other sum included within the payoff amount;

(2) the information reasonably necessary to calculate the payoff amount as of the requested payoff date, including the per diem interest amount; and

(3) the payment cutoff time, if any, the address or place where payment must be made, and any limitation as to the authorized method of payment.

(e) A payoff statement may contain the amount of any fees authorized under this section not included in the payoff amount.

(f) A secured creditor may not qualify a payoff amount or state that it is subject to change before the payoff date unless the payoff statement provides information sufficient to permit the entitled person or the person's authorized agent to request an updated payoff amount at no charge and to obtain that updated payoff amount during the secured creditor's normal

business hours on the payoff date or the immediately preceding business day.

(g) A secured creditor must provide upon request one payoff statement without charge during any six-month period. A secured creditor may charge a fee of [\$25] for each additional payoff statement requested during that six-month period. However, a secured creditor may not charge a fee for providing an updated payoff amount under subsection (f) or a corrected payoff statement under Section 202(a).

(h) Unless the security instrument provides otherwise, a secured creditor is not required to send a payoff statement by means other than first-class mail. If the creditor agrees to send a statement by another means, it may charge a reasonable fee for complying with the requested manner of delivery.

(i) Except as otherwise provided in Section 205, if a secured creditor to which a notification has been given pursuant to subsection (a) does not send a timely payoff statement that substantially complies with subsection (d), the creditor is liable to the entitled person for any actual damages caused by the failure plus [\$500], but not punitive damages. A creditor that does not pay the damages provided in this subsection within 30 days after receipt of a notification demanding payment may also be liable for reasonable attorney's fees and costs.

Comment

1. *Payoff statements; scope of obligation.* Most residential mortgage loans are paid off prior to maturity, either upon a transfer of the mortgaged land or upon a refinancing by the landowner. In these situations, the mortgage lender customarily issues a payoff statement, specifying the amount of the payment needed to satisfy the balance of the mortgage loan. Sections 201 and 202 address the nature and scope of the mortgage lender's obligation to issue a payoff statement, the contents and effect of such a statement, and the consequences of the lender's failure to issue a statement.

The payoff statement must include the "payoff amount," which is defined in Section 102(9) as the sum necessary to satisfy the secured obligation. By definition, the "security

interest" that secures the "secured obligation" must create an interest in "residential real property" as defined in this Act. *See* Sections 102(13), (15), (17). Thus, the obligation to issue a payoff statement under this Act applies only to loans secured by "residential real property."

Under subsection (c), the secured creditor must issue a payoff statement within 10 days after the effective date of a notification requesting a payoff statement. A creditor that receives a notification requesting a payoff statement but that never held an interest in the secured obligation has no duty to respond to the request. *Cf.* U.C.C. § 9-625(f). A creditor that once held an interest in the secured obligation but has since assigned that interest need not send a payoff statement, but must provide the entitled person or the authorized agent with the name and address of the assignee.

2. *Persons entitled to payoff statement.* The Act permits an "entitled person" to obtain a payoff statement, either acting directly or through an authorized agent. An "entitled person" means the landowner or a person liable for payment or performance of the secured obligation (such as a guarantor, or a predecessor in title who was the original mortgagor). As discussed in the comments to Section 102, the identity of the "landowner" (who qualifies as an "entitled person") under the Act is contextual. In this context, the "entitled person" is the person who owns the mortgaged real property at the time of the request for a payoff statement. If a payoff statement is being requested in conjunction with an upcoming sale or transfer of the mortgaged land, the "landowner" would be the seller/transferor, not the buyer/transferee.

Consistent with the principles of agency law, an entitled person under this section may act through any authorized agent acting on the entitled person's behalf. For example, if Seller has contracted to sell mortgaged land to Buyer, and Seller has authorized Attorney to represent her in the transaction, Attorney may properly request a payoff statement on Seller's behalf. Likewise, if Buyer's attorney, title insurer or settlement agent will be handling the closing and disbursement of funds, Seller may authorize Buyer or Buyer's agent to request a payoff statement under this section (even though Buyer's attorney, title insurer, or settlement agent would not constitute the Seller's agent for other purposes).

3. *Payoff statements and junior lienholders.* In the context of a default under a senior mortgage, a junior lienholder may wish to obtain payoff information regarding the senior mortgage in order to evaluate what steps the junior lienholder should take to protect its interest in the mortgaged land. Under the Act, a junior lienholder would not typically be an "entitled person" (as a junior lienholder is not typically liable on the secured obligation). Nevertheless, a junior lienholder would have the right to obtain a payoff statement as an agent of the landowner if the landowner has so authorized, either in the loan documents evidencing the junior lien or otherwise.

4. *Privacy concerns.* Potential privacy concerns arise with respect to the disclosure of financial information such as the outstanding balance of a mortgage loan. Subsection (a) attempts to address potential privacy concerns by requiring that a person requesting a payoff statement provide sufficient information to enable the secured creditor to identify the secured

obligation and the mortgaged real property. A payoff statement request should be sufficient to satisfy this requirement if it includes the loan number or some other identifier assigned by the secured creditor.

Privacy concerns are of greater significance if the secured creditor discloses financial information to someone other than the obligor. Nevertheless, agents commonly facilitate closing transactions involving the sale or refinancing of real property, and regularly seek payoff statements in connection with such closings. In the overwhelming majority of cases, the person facilitating the closing is in fact authorized by the entitled person to request a payoff statement. As a result, it would be inefficient for the Act to require the entitled person, in every case, to provide the mortgage lender with a document expressly authorizing the closing agent to request a payoff statement. Instead, subsection (a)(2) requires that if a notification requesting a payoff statement is given by a person other than an entitled person, the notification must identify the requester and state that the requester is an authorized agent of the entitled person. Subsection (b) then requires the secured creditor to provide the payoff statement to the identified person, unless the creditor knows that the entitled person did not authorize the request.

5. *Payoff statement: request.* An entitled person may request a payoff statement by giving a notification containing such a request in the manner specified by Section 103. The notification must identify the proposed payoff date, which cannot be more than 30 days following the date of the notification. The notification must provide the information required by subsection (a). However, the secured creditor's delivery of a payoff statement precludes a later claim by the creditor that the notification failed to comply with subsection (a). Section 201(c).

6. *Payoff statement: form.* Because mortgage loans may vary significantly in their terms and conditions, the Act does not specify a particular form that a payoff statement must take to satisfy this section. Instead, subsection (d) provides certain information that the secured creditor must include in order to comply with its obligation to deliver a payoff statement. The payoff statement must enable the entitled person to ascertain how the secured creditor calculated the payoff amount. Accordingly, the Act requires that the payoff statement must reflect, *by type*, each item, fee or charge that comprises the balance of the secured obligation. For example, if the borrower had incurred several individual late payment charges, the secured creditor could group those charges together under a heading entitled "Late Charges." However, the secured creditor could not aggregate late payment charges, default interest, and a prepayment fee and list them as "miscellaneous fees and charges."

The payoff statement must also include any specified payment cutoff time (*i.e.*, the time after which the borrower will accrue another day's interest on the secured obligation) and any permitted limitations upon the authorized method of payment, as well as the appropriate address or place for payment.

7. *Payoff statement: disclaimers as to accuracy of payoff amount.* The secured creditor may include in a payoff statement information beyond that specified in subsection (d). However, such additional information cannot include disclaimers or other language intended to defeat the

ability of the entitled person to rely generally upon the accuracy of the payoff amount.

On the typical mortgage loan, it is possible (if not likely) that the balance of the secured obligation may change between the date that a secured creditor issues a payoff statement and the proposed payoff date. Such a change could occur for a variety of reasons: *e.g.*, the applicable interest rate changed (if the mortgage note bears a variable rate or includes a provision for default interest); the borrower had made a previous payment that had been posted to the borrower's account but was subsequently returned for insufficient funds; the loan is a home equity loan and the borrower makes an additional draw on the line of credit following the payoff statement request; the lender had to advance additional funds to protect its security. Subsection (f) does permit the secured creditor to issue a payoff statement providing that the balance may be subject to change prior to the payoff date, but only if the payoff statement provides sufficient information to permit the entitled person to obtain a reliable updated payoff amount on the payoff date or the immediately preceding business day (*e.g.*, by telephone, facsimile transmission, or electronic mail).

8. *Payoff statement: fees and charges.* Subsection (g) provides that a secured creditor must provide one payoff statement without charge during any six-month period, but permits the secured creditor to impose a fee for issuing an additional payoff statement during that six-month period. The secured creditor cannot impose a fee for sending a corrected payoff statement or for updating a qualified payoff statement issued under subsection (f). Under subsection (a), a payoff statement would become ineffective 30 days after it was issued. After that time, the secured creditor would have no obligation to provide a free updated payoff amount under subsection (g).

Subsection (h) provides that a secured creditor may not be required to send a payoff statement by means other than first-class mail (unless the security instrument so requires). If the entitled person requests an expedited manner of delivery and the secured creditor agrees (*e.g.*, by overnight commercial delivery service or facsimile transmission), the creditor may charge a reasonable fee for complying with the requested manner of delivery.

Subsection (e) permits the secured creditor to include in the payoff statement any permissible fees for issuance or expedited delivery of a payoff statement. Whether liability for such fees is secured by a security interest is determined by the terms of the security instrument and law other than this Act. If the security instrument provides that the security interest secures repayment of the fees and such a provision is enforceable under other law, then the fees would be part of the payoff amount. If the security instrument does not provide that the security interest secures repayment of the fees, subsection (e) still permits the secured creditor to list the fees on the payoff statement, even though the fees would not be part of the payoff amount.

9. *Secured creditor's liability for failure to deliver payoff statement.* If a secured creditor fails to send a timely payoff statement, subsection (i) provides that the creditor is liable to the entitled person for any actual damages caused by its failure, plus the additional sum of [\$500]. This subsection is patterned on U.C.C. Section 9-210(f) and ensures that the secured creditor's nondelivery of a payoff statement will generally result in liability regardless of any injury that

may have resulted. Thus, the entitled person may collect the penalty of [\$500] even if it suffers no actual damages due to the secured creditor's failure. The Act makes clear that the [\$500] minimum statutory damages provides the Act's exclusive punitive sanction for failure to provide a timely payoff statement; a court may not impose punitive damages against a secured creditor for its failure to provide a timely payoff statement under subsection (c).

In the event that a secured creditor fails to provide a timely payoff statement, the entitled person may give a notification demanding payment of its actual damages (*e.g.*, additional interest accruing on the loan due to the delay) and the statutory penalty. If the creditor pays such sums within 30 days after receipt of the notification, then the creditor is not liable for attorney's fees and court costs incurred by the entitled person in enforcing the creditor's obligations under this section. However, if the creditor does not pay such sums within 30 days after receipt of the notification, subsection (i) authorizes the entitled person to collect reasonable attorney's fees and costs.

Section 205 provides that if the secured creditor has established a reasonable procedure for complying with its obligation to issue payoff statements, has complied with that procedure in good faith, and was unable to satisfy its obligation because of circumstances beyond its control, the secured creditor is not liable despite its noncompliance with this section.

A payoff statement must be in "substantial compliance" with the requirements of subsection (d); a minor error in a payoff statement does not mean that the creditor has failed to provide a payoff statement so as to trigger liability under subsection (i). The Act leaves to judicial resolution whether a particular payoff statement substantially complies with Section 201(d).

SECTION 202. UNDERSTATED PAYOFF STATEMENT: CORRECTION; EFFECT.

(a) If a secured creditor determines that the payoff amount it provided in a payoff statement was understated, the creditor may send a corrected payoff statement. If the entitled person or the person's authorized agent receives and has a reasonable opportunity to act upon a corrected payoff statement before making payment, the corrected statement supersedes an earlier statement.

(b) A secured creditor that sends a payoff statement containing an understated payoff amount may not deny the accuracy of the payoff amount as against any person that

reasonably and detrimentally relies upon the understated payoff amount.

(c) This [act] does not:

(1) affect the right of a secured creditor to recover any sum that it did not include in a payoff amount from any person liable for payment of the secured obligation; or

(2) limit any claim or defense that a person liable for payment of a secured obligation may have under law other than this [act].

Comment

1. *Corrected payoff statements.* A secured creditor sometimes issues a payoff statement, but later discovers that it understated the payoff amount. In this situation, subsection (a) permits the secured creditor to issue a corrected payoff statement. If the entitled person or its authorized agent receives and has a reasonable opportunity to act upon the corrected payoff statement before making payment, then the corrected statement supersedes the erroneous statement. *Cf.* U.C.C. Section 4-403 (stop payment order is effective after it is received by a bank and bank has reasonable opportunity to act upon it). The Act leaves to judicial resolution whether a secured creditor has provided a corrected payoff statement within a reasonable time to permit the entitled person or its authorized agent to act upon it.

2. *Reasonable reliance upon erroneous payoff amount.* Generally speaking, the secured creditor must submit for recording a satisfaction of a security instrument after it receives full payment or performance of the obligation secured by the lien of that instrument. *See* Section 203(a). If the secured creditor erroneously understates the payoff amount and does not correct it, however, this error may mislead a buyer or refinancing lender to complete a sale or refinancing transaction. A buyer, a buyer's mortgage lender, or a refinancing lender may pay or advance the amount stated in the payoff statement in reliance upon its accuracy. Subsection (b) makes clear a secured creditor may not enforce the security instrument against a person who reasonably and detrimentally relied upon the accuracy of the payoff amount.

In some cases, a secured creditor may attempt to defeat third party reliance by qualifying the accuracy of the payoff amount. Under Section 201(f), however, a secured creditor cannot qualify the accuracy of a payoff amount unless the payoff statement provides information sufficient to permit the entitled person or its authorized agent to obtain an updated payoff amount at no charge during the creditor's normal business hours on the payoff date or the immediately preceding business day. In this way, the Act permits a secured creditor to qualify the reliability of an initial payoff statement, but only by providing the entitled person with the means of obtaining an updated and reliable payoff amount just prior to closing. As a result, an entitled person that receives a statement containing a qualified payoff amount cannot rely upon the accuracy of that amount if the entitled person proceeds to closing without first confirming the

updated payoff amount.

3. *Act affects validity of mortgage rather than debt.* Section 202(b) only addresses the validity of the mortgage as against persons that reasonably relied upon an understated payoff amount. The Act is meant to have no effect upon the liability of any person on the underlying obligation. As subsection (c) makes clear, the extent of that liability is a function of law other than this Act. Thus, even if subsection (b) precludes a secured creditor from enforcing its security instrument after a purchaser has reasonably and detrimentally relied upon an understated payoff amount, the secured creditor can still recover the balance of the secured obligation from any person liable for that obligation under the terms of the loan documents and applicable law other than this Act.

4. *Overstated payoff amounts.* The provisions of Section 202 are directed primarily at the problem of understated payoff amounts and the reliance that such understatements can produce. On occasion, however, a secured creditor may overstate the necessary payoff amount. While this Act governs the secured creditor's obligation to record a satisfaction document, it does not govern the potential liability of the creditor for demanding or collecting an excessive payoff amount. Existing law in each state already addresses this situation, and the Act leaves resolution of this issue to that body of law.

Under Section 203(a), the secured creditor's responsibility to submit a satisfaction document for recording is triggered by the full payment or performance of the secured obligation. Thus, if the entitled person tenders payment of the overstated payoff amount, the secured creditor has received more than full payment and Section 203(a) obligates the secured creditor to submit a satisfaction document for recording within 30 days. If applicable state law requires the secured creditor to refund the overpayment to the payor (as state law typically does), then the payor may recover the overpayment from the secured creditor pursuant to that applicable law. Likewise, if the secured creditor knew that the payoff amount was overstated and accepted full payment of that amount without disclosure to the payor, and applicable state law treats such conduct as an unfair or deceptive trade practice, the payor could pursue its remedies under that law.

In some cases, the applicable documents governing a mortgage loan may contain a provision purporting to excuse the secured creditor from refunding overpayments below a *de minimis* threshold. The enforceability of such a provision is left to applicable law other than this Act.

5. *Illustrations.* The application of this subsection is demonstrated by the following illustrations:

Illustration 1. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for \$100,000, with a closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of \$80,000. The statement qualified

the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of \$80,450 from the First Bank website, and communicated the updated payoff amount to Waldman. Waldman completed the purchase, and the settlement agent handling the closing paid \$80,450 to First Bank pursuant to the updated payoff amount. In fact, the updated payoff amount was inaccurate. The correct balance was \$80,800, and reflected an additional \$350 properly advanced by First Bank to cure an insurance escrow shortage and maintain casualty insurance on Blackacre. Waldman did not know or have reason to know of the error. Under subsection (b), First Bank cannot enforce the mortgage against Waldman. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the \$350 from Heinsz.

Illustration 2. Same as Illustration 1, except Heinsz did not obtain an updated payoff amount on May 1. As a result, Waldman completed the purchase, and the settlement agent handling the closing paid \$80,000 to First Bank pursuant to the April 10 payoff statement. First Bank is not precluded from denying the accuracy of the payoff amount as against Waldman, and can enforce the mortgage against Waldman if it does not receive payment of the additional \$800 due on the mortgage loan.

Illustration 3. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz sought to refinance the mortgage through Security Bank. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of \$80,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of \$80,450 from the First Bank website and communicated the updated payoff amount to Security Bank. That same day, Heinsz completed the refinancing transaction, with Security Bank taking a new mortgage on Blackacre and paying \$80,450 to First Bank pursuant to the updated payoff amount. In fact, the updated payoff amount was inaccurate. The correct balance was \$80,800, and reflected an additional \$350 properly advanced by First Bank to cure an insurance escrow shortage and maintain casualty insurance on Blackacre. Security Bank did not know or have reason to know of the error. First Bank cannot deny the accuracy of the payoff amount as against Security Bank. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the \$350 from Heinsz. Moreover, if Heinsz knew or had reason to know of the escrow shortage (for example, if he had received a demand to cure the escrow shortage), Heinsz's reliance upon the understated payoff amount would not be reasonable and First Bank could enforce its mortgage lien against Heinsz. In such a situation, Section 202(b) effectively subordinates First Bank's mortgage to the new mortgage held by Security Bank.

Illustration 4. Heinsz owned Blackacre, a home subject to a home-equity line of credit held by First Bank. Heinsz contracted to sell Blackacre to Waldman for \$100,000, with a

closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of \$10,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of \$10,150 from the First Bank website. Waldman completed the purchase, the settlement agent handling the closing paid \$10,150 to First Bank pursuant to the updated payoff amount, and ABC Title Insurance Co. issued an owner's policy of title insurance insuring Waldman's fee simple title. In fact, the updated payoff amount was inaccurate; it did not reflect a \$250 advance obtained by Heinsz on the credit line on April 29. Neither Waldman nor ABC Title Insurance Co. knew or had reason to know of the \$250 advance. First Bank cannot enforce the mortgage against Waldman. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the \$250 from Heinsz.

Illustration 5. Heinsz owned Blackacre, a home subject to a mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for \$100,000, with a closing scheduled for May 1. On the scheduled closing day, Heinsz obtained an updated payoff amount of \$80,450 from the First Bank website, and communicated the updated payoff amount to Waldman. Waldman completed the purchase, and the settlement agent handling the closing issued a check for \$80,450 to First Bank pursuant to the updated payoff amount. Subsequent to closing, the check to First Bank was dishonored, and Waldman discovered that the settlement agent had misappropriated the closing proceeds. First Bank can enforce the mortgage against Waldman. The mortgage debt was not satisfied, the payoff amount provided by First Bank was accurate, and Waldman was in a position to insist that the settlement agent provide good funds to First Bank.

Illustration 6. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for \$100,000, with a closing scheduled for May 1. On April 10, Heinsz obtained a payoff statement from First Bank indicating that Heinsz owed an outstanding balance of \$80,000. The statement qualified the accuracy of the payoff amount, but contained instructions to permit Heinsz to obtain an updated payoff amount via First Bank's website on the payoff date. On May 1, Heinsz obtained an updated payoff amount of \$78,500 from the First Bank website, and communicated the updated payoff amount to Waldman. The updated payoff amount reflected an intermediate prepayment by check by Heinsz; First Bank had posted the payment to Heinsz's account on April 29, but the check had not yet cleared through normal banking channels. In reliance on the updated payoff amount, Waldman completed the purchase, and the settlement agent handling the closing paid \$78,500 to First Bank pursuant to the updated payoff amount. On May 3, Heinsz's prepayment check was returned for insufficient funds. First Bank cannot enforce the mortgage against Waldman, unless the updated payoff information reasonably alerted Waldman as to the fact that Heinsz had made a prepayment by check that had not yet fully cleared through normal banking channels. Subject to any defenses that Heinsz could raise under law other than this Act, however, First Bank could recover the balance of the mortgage

debt from Heinsz.

Illustration 7. Heinsz owned Blackacre, a home subject to a recourse mortgage held by First Bank. Heinsz contracted to sell Blackacre to Waldman for \$100,000, with a closing scheduled for May 1. On April 30, Heinsz obtained a updated payoff statement from First Bank indicating that Heinsz owed an outstanding balance of \$80,000. In fact, this payoff amount was inaccurate; Heinsz owed only \$78,000. Heinsz ascertained the mistake and tendered payment of \$78,000. First Bank collected this payment but refused to submit a satisfaction document for recording until Heinsz paid an additional \$2,000. Under Section 203(a), First Bank is obligated to submit a satisfaction document for recording, and faces potential liability under this Act if it fails to do so. *See Sections 203(b), (c).* Whether First Bank has any liability to Heinsz for demanding an excessive payoff amount is governed by applicable law other than this Act.

SECTION 203. SECURED CREDITOR TO SUBMIT SATISFACTION FOR RECORDING; LIABILITY FOR FAILURE.

(a) A secured creditor shall submit for recording a satisfaction of a security instrument within 30 days after the creditor receives full payment or performance of the secured obligation. If a security instrument secures a line of credit or future advances, the secured obligation is fully performed only if, in addition to full payment, the secured creditor has received a notification requesting the creditor to terminate the line of credit or containing a statement sufficient to terminate the effectiveness of the provision for future advances in the security instrument.

(b) Except as otherwise provided in Section 205, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does not do so by the end of the period specified in subsection (a) is liable to the landowner for any actual damages caused by the failure, but not punitive damages..

(c) Except as otherwise provided in subsection (d) and in Section 205, a secured creditor that is required to submit a satisfaction of a security instrument for recording and does

not do so by the end of the period specified in subsection (a) is also liable to the landowner for [\$500] and any reasonable attorney's fees and court costs incurred if, after the expiration of the period specified in subsection (a):

(1) the landowner gives the creditor a notification, by any method authorized by Section 103 that provides proof of receipt, demanding that the creditor submit a satisfaction for recording; and

(2) the creditor does not submit a satisfaction for recording within 30 days after receipt of the notification.

(d) Subsection (c) does not apply if the secured creditor received full payment or performance of the secured obligation before the effective date of this [act].

Comment

1. *Obligation to record satisfaction upon full performance.* Subsection (a) provides that the secured creditor has an affirmative obligation to submit for recording a satisfaction of a security instrument within 30 days after full payment or performance of the secured obligation. If the secured creditor fails to satisfy this obligation, subsection (b) renders the creditor liable for actual damages caused by its failure, but not punitive damages other than the statutory penalty authorized by subsection (c). The exercise of this remedy is subject to the normal rules of pleading and proof.

2. *Liability for statutory penalty and attorney's fees.* Subsection (c) authorizes statutory damages of [\$500], and reimbursement of reasonable attorney's fees, against a secured creditor that fails to comply with the obligation to record a timely satisfaction of a security instrument. The landowner may recover this sum in addition to any actual damages recoverable under subsection (b). This provision is conceptually similar to U.C.C. Section 9-625(e)(4), which provides for a minimum statutory damage recovery whenever an Article 9 secured party fails to provide a termination statement in a timely manner. Potential liability for statutory damages and attorney's fees (in addition to any actual damages) should provide secured creditors with appropriate incentives to take steps to record satisfactions in a timely manner.

The landowner may not recover statutory damages and attorney's fees under subsection (c) unless the landowner first gives notification to the secured creditor, by a method authorized by Section 103 that also provides proof of receipt, demanding that the secured creditor submit a satisfaction document for recording within 30 days of the notification. The requirement for

proof of receipt serves to ensure that the notification will be given in a manner that will serve to alert the secured creditor's administrative staff as to the potential legal significance of the notification, thereby facilitating the creditor's ability to respond promptly to the notification. If the landowner fails to provide this notification, the landowner may still recover damages for any actual loss caused by the secured creditor's failure to record a timely satisfaction, but cannot collect statutory damages or attorney's fees.

The landowner may not give the notification required by subsection (c) until after the 30-day period set forth in subsection (a) has expired. Any such notification given to the secured creditor contemporaneous with a payoff, or within the first 30 days following payment of the secured obligation, is ineffective. Effectively, this means that a secured creditor cannot be held liable for statutory damages and attorney's fees without having had a minimum of 60 days in which to record a satisfaction.

3. *Payoffs prior to effective date of this Act.* Under subsection (d), the secured creditor is not liable for statutory damages or attorney's fees under this Act if the secured obligation was satisfied prior to the effective date of this Act. Liability for statutory damages and attorney's fees under this Act is limited to situations where payoff occurred following the effective date of this Act.

At present, existing mortgage satisfaction statutes in many states impose penalties upon lenders who fail to record timely satisfactions. These statutes would continue to apply to a lender that received full payment of a mortgage obligation prior to the effective date of this Act but failed to record a timely satisfaction.

4. *Servicer's liability as "secured creditor."* In many cases, secured creditors will delegate responsibility for servicing mortgage loans, including the responsibility to record satisfactions of security instruments. In these cases, the Act treats the servicer as a "secured creditor," and the landowner thus could hold the servicer liable under the terms of the Act. Such delegations of authority do not automatically relieve the delegating secured creditor of its obligations under the Act.

5. *Disputes over whether full performance received.* Under the Act, the secured creditor must submit a satisfaction for recording if it has received full payment or performance of the secured obligation. The mere existence of a dispute over the balance of the secured obligation does not by itself toll the applicable 30-day grace periods established by this section. If the secured creditor does not submit a satisfaction for recording within 30 days, the secured creditor bears the risk that a court might later conclude that the landowner did in fact tender full payment of the secured obligation and that the secured creditor should have recorded a satisfaction. See Section 202, Comment 5, Illustration 7.

6. *Fees for preparing and recording satisfaction.* This Act leaves undisturbed any existing laws with respect to the secured creditor's ability to charge a fee for the preparation and recording of a satisfaction. Statutes in some states authorize the lender to charge a specified or

reasonable fee to cover expenses of preparation and recording, while statutes in other states obligate the lender to provide the satisfaction without charge.

7. *Landowner entitled to damages.* Under the Act, the "landowner" is the person entitled to collect actual and/or statutory damages in the event that a secured creditor fails to record a timely satisfaction. In this context, this means the landowner at the time of the secured creditor's failure to record a timely satisfaction. For example, suppose that Heinsz owns Blackacre, a home that is subject to a mortgage held by First Bank. Heinsz sells the home to Waldman. At the closing, Heinsz pays to First Bank the amount necessary to satisfy the balance of the mortgage debt, but First Bank fails to record a satisfaction within the 30 days following closing. For purposes of First Bank's liability under this section, Waldman is the landowner.

In some limited circumstances, a person other than the landowner could have standing to pursue a claim for damages under this section. For example, in the above hypothetical, if at closing Waldman assigned to Heinsz any claim against First Bank based upon First Bank's failure to record a timely satisfaction, then Heinsz may assert Waldman's status as a landowner under this Act. Likewise, if Heinsz paid damages to Waldman to settle a deed warranty claim arising because of First Bank's failure to record a timely satisfaction, Heinsz would be subrogated to Waldman's status as the landowner for the purpose of recovering damages from First Bank as permitted by this section.

SECTION 204. FORM AND EFFECT OF SATISFACTION.

(a) A document is a satisfaction of a security instrument if it:

(1) identifies the security instrument, the original parties to the security instrument, the recording data for the security instrument, and the office in which the security instrument is recorded;

(2) states that the person signing the satisfaction is the secured creditor;

(3) contains a legal description of the real property identified in the security instrument, but only if a legal description is necessary for a satisfaction to be properly indexed;

(4) contains language terminating the effectiveness of the security instrument; and

(5) is signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

(b) The [appropriate governmental office under the recording act of this state] shall accept for recording a satisfaction of a security instrument, unless:

(1) an amount equal to or greater than the applicable recording fees and taxes is not tendered;

(2) the document is submitted by a method or in a medium not authorized by the [appropriate governmental office under the recording act of this state]; or

(3) the document is not signed by the secured creditor and acknowledged as required by law for a conveyance of an interest in real property.

Comment

1. *Alternative methods of evidencing satisfaction.* The Act is not intended to provide the sole mechanism for effecting the satisfaction of a security instrument. For example, in some states, a secured creditor can present to the recording officer an affidavit that instructs the officer to enter a notation of satisfaction in the margin of the record on the page on which the security instrument appears in the record. Unless a state chose to repeal a statutory provision authorizing another method of effecting a satisfaction, a secured creditor could satisfy its obligation to satisfy the security instrument by complying with that statute.

2. *Minimum content for satisfaction document.* Subsection (a) is intended to foster uniformity by specifying minimal standard information for a recorded satisfaction. This should facilitate the development of standard satisfaction forms in states adopting the Act. Under the Act, a satisfaction document must identify the security instrument, the original parties to that instrument, and the recording data and office in which it was recorded. The satisfaction document must also contain language terminating the instrument's effectiveness, as well as a statement that the person signing the document is the secured creditor. If a legal description is necessary for the recording officer to properly index a satisfaction document, then the document must contain a legal description of the real property covered by the security instrument; otherwise, the satisfaction document need not contain a legal description. Thus, if a particular county uses tract indexing, the satisfaction document must include a tract description; by contrast, in a county that uses grantor-grantee indexing, a legal description is unnecessary for proper indexing and may be omitted. Finally, the satisfaction document must be signed by the secured creditor and acknowledged as required by law for an effective conveyance of an interest

in real property.

Once recorded, a document complying with subsection (a) operates as a satisfaction in favor of persons entitled to the benefit of the state's recording act. A document that does not substantially comply with subsection (a) does not constitute a satisfaction under this Act.

3. *Grounds for rejection by recorder.* A frequent cause of delay in recording a mortgage satisfaction is the recorder's rejection of a satisfaction document tendered by the secured creditor or its agent. Such a rejection is appropriate if a satisfaction lacks the necessary formalities for a recordable document (such as a proper acknowledgment), if the satisfaction is not tendered with the appropriate recording fee, or if the satisfaction document is submitted in a form or medium not authorized by the recording office.

In some cases, however, recorders reject satisfaction documents because they lack information that is practically unnecessary for a satisfaction to serve the notice function required of the recording system. For example, some recorders will reject a satisfaction that does not include a legal description of the affected real property. However, if a satisfaction contains the recording data for the security instrument being released, the satisfaction need not contain a legal description of the real estate unless that description is necessary for indexing the document. In a county that uses grantor-grantee indexing, rejection of a satisfaction document for lack of a legal description serves no useful purpose.

Subsection (b) thus limits the discretion of the recorder in rejecting a satisfaction document. If such a document is submitted to the recorder in a manner that meets the recorder's technical recording formalities, along with the appropriate filing fee, the recorder may not reject the satisfaction document. Thus, a recorder in a county that has not yet authorized electronic recording may properly reject a satisfaction document submitted electronically. Likewise, a recorder in a county that requires recordable documents to be submitted on 8-1/2" by 11" paper with 1" margins may properly reject a satisfaction that is submitted on legal-size paper, or with insufficient margins. Obviously, a recorder may properly reject a satisfaction that contains no acknowledgment or an acknowledgment that fails to comply with state law other than this Act. However, the recorder may not reject a satisfaction document because it fails to contain information that is not required by subsection (a). Thus, for example, a recorder may not reject a satisfaction because it fails to indicate the name of the attorney who drafted it, or because it does not contain a legal description of the real property if that description is unnecessary to ensure proper indexing of the document.

Subsection (b) addresses a particular problem that results in some jurisdictions where a mortgagee attempts to record a satisfaction of a mortgage that it holds via one or more unrecorded assignments. In some jurisdictions, recording officers refuse to accept a satisfaction for recording if the secured creditor is not an original party to the security instrument, unless the satisfaction document recites the chain of recorded assignments by which the secured creditor claims an interest in the real property. Under subsection (b), the recorder may not reject a satisfaction document, even if it does not recite the chain of recorded assignments by which the

secured creditor acquired its interest. This provision is critical to advance the Act's objective of providing a landowner with an efficient title-clearing mechanism. In many cases, it would be either prohibitively expensive or time-consuming for the secured creditor to locate and record the complete chain of intermediate assignments of the security instrument. In other cases, intermediate assignments have been lost or intermediate assignors are defunct, making it practically impossible to reconstruct a complete record chain of assignments.

SECTION 205. LIMITATION OF SECURED CREDITOR'S LIABILITY. A

secured creditor is not liable under this [act] if it:

- (1) established a reasonable procedure to achieve compliance with its obligations under this [act];
- (2) complied with that procedure in good faith; and
- (3) was unable to comply with its obligations because of circumstances beyond its control.

Comment

The Act imposes potential liability on a secured creditor that fails to provide a payoff statement in a timely manner [Section 201(i)] or to submit for recording a timely satisfaction [Section 203(b), (c)]. In some circumstances, however, a secured creditor's failure to comply with these obligations may be due to circumstances legitimately beyond its control. Thus, Section 205 provides a secured creditor with a defense to liability if the creditor has established reasonable procedures to achieve timely compliance with its obligations under this Act and has complied with those procedures in good faith, but cannot comply because of circumstances beyond the control of the secured creditor.

The Act does not exhaustively specify what procedures are "reasonable" or what circumstances are beyond the control of the secured creditor, but leaves the question to judicial resolution. The application of Section 205 is demonstrated by the following illustrations:

Illustration 1. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and within 20 days deposits with Federal Express a satisfaction document that is in proper form, accompanied by the appropriate fee, and addressed to the appropriate recording officer. Federal Express fails to deliver the document to the recording official before the expiration of the 30-day period in section 203(a) due to a traffic accident that resulted in the destruction of the

document. If First Bank can demonstrate that it had timely deposited the satisfaction document to the recorder's proper address, and if First Bank acts to submit for recording a new satisfaction document within a reasonable time upon being notified that the first satisfaction document was never recorded, First Bank is not liable to Heinsz.

Illustration 2. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and deposits with the United States Postal Service a satisfaction document that is in proper form and addressed to the appropriate recording officer. The document is accompanied by an amount that was sufficient to satisfy the necessary recording fees and taxes as of the time First Bank deposited the document into the mail. While the document is in transit, however, the applicable recording fee increases; as a result, the recording officer rejects the document because it is not accompanied by the sufficient recording fee. If First Bank can demonstrate that it did not know or have reason to know of the pending recording fee change at the time it deposited the satisfaction document into the mail, and if First Bank acted within a reasonable time to tender the correct recording fee upon learning of the rejection, First Bank is not liable to Heinsz. By contrast, if First Bank knew or had reason to know of the pending recording fee change, First Bank is liable to Heinsz as provided in Section 203.

Illustration 3. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Upon receiving full payment of the mortgage debt, First Bank follows its standard procedures for preparing and recording a satisfaction, and deposits with the United States Postal Service a satisfaction document that is in proper form, accompanied by the appropriate fee, and addressed to the appropriate recording officer. The postal service fails to deliver the document to the recording official before the expiration of the 30-day period in section 203(a), however, because the document was routed through a post office facility that was shut down indefinitely due to the presence of mail contaminated by anthrax. If First Bank can demonstrate that it had timely deposited the satisfaction document to the recorder's proper address, First Bank is not liable to Heinsz.

Illustration 4. Heinsz owns Blackacre, a home subject to a mortgage in favor of First Bank. Heinsz makes full payment of the mortgage debt to First Bank at a time when prevailing mortgage interest rates are low and First Bank is experiencing high refinancing volume. First Bank does not maintain a sufficient administrative staff to handle such a volume of satisfactions, and First Bank neither hires additional staff nor retains an outside contractor to facilitate its compliance with its obligations under this Act. As a result, First Bank does not submit a satisfaction of Heinsz's mortgage within the 30-day period specified in Section 203(a). Because the size of its administrative staff is within its control, First Bank has liability to Heinsz as provided in Section 203(b).

Illustration 5. First Bank makes a loan to Heinsz, secured by a mortgage on Heinsz's home Blackacre. Upon closing the mortgage loan, First Bank sends the mortgage to the

appropriate recording officer accompanied by the appropriate recording fee. Four months later, Heinsz pays off the mortgage debt in full in conjunction with a refinancing. However, because of an approximately eight-month backlog at the recording office, the recording officer still had not recorded First Bank's mortgage as of the time of the payoff. As a result, First Bank lacks the recording data necessary to prepare the satisfaction document, and more than 30 days passes before the recorder finally records the mortgage and returns a copy to First Bank. If First Bank can demonstrate that it has established reasonable procedures to comply with its obligation to record timely mortgage satisfactions, and if First Bank acts promptly to record a satisfaction document once it finally receives the appropriate recording data, First Bank is not liable to Heinsz.

[ARTICLE] 3

SATISFACTION BY AFFIDAVIT

SECTION 301. DEFINITION; ELIGIBILITY TO SERVE AS SATISFACTION AGENT; REGULATION OF SATISFACTION AGENTS.

(a) In this [article], "title insurance company" means an organization authorized to conduct the business of insuring titles to real property in this state.

(b) The following may serve as a satisfaction agent under this [article]:

(1) a title insurance company, acting directly or through an agent authorized to sign and submit for recording an affidavit of satisfaction; or

(2) an attorney licensed to practice law in this state and in good standing.

[(c) The [name of statewide governmental agency] may establish registration, bonding, and other standards for conducting business as a satisfaction agent.]

Legislative note: Subsection (c) may be omitted if a jurisdiction concludes that regulatory restriction of satisfaction agents is unnecessary.

Comment

1. *Identifying a "satisfaction agent."* Article 3 provides a "self-help" procedure that allows a landowner to take steps to satisfy a security instrument in cases where the secured creditor has failed to fulfill its obligation to record a timely satisfaction. This Article creates a process that, if complied with, permits a landowner to have a "satisfaction agent" submit for recording an affidavit of satisfaction of a security instrument. Under Section 306, this affidavit of satisfaction constitutes a legal satisfaction of the security instrument.

In the event that the satisfaction agent wrongfully records an affidavit of satisfaction, Section 307 provides that the satisfaction agent is liable to the secured creditor for damages caused by the wrongful recording. As a result, the Act provides that a "satisfaction agent" must be either a title insurance company (acting directly or through an agent authorized to execute affidavits of satisfaction) or a licensed attorney in good standing. This limitation increases the likelihood that affidavits of satisfaction will be recorded only by persons who have the financial

responsibility necessary to compensate a secured creditor that suffers a loss caused by the wrongful recording of an affidavit of satisfaction. However, because of the potential concern that satisfaction agents be of sufficient financial responsibility, an appropriate state agency may wish to establish registration, bonding, or other standards for conducting business as a satisfaction agent.

Because the satisfaction agent acts in this instance pursuant to the authority of the Act, it is irrelevant whether the satisfaction agent is named as a party in the security instrument.

2. *Scope.* The provisions of this Act are limited to security instruments covering "residential real property," meaning real property that is used primarily for personal, family, or household purposes and is improved by one to four dwelling units. This limitation effectively limits the "self-help satisfaction" provisions of Article 3 to the consumer mortgage context. An owner of nonresidential real property who is unable to obtain a timely satisfaction of its mortgage and wishes to clear title must do so by bringing a quiet title action.

SECTION 302. AFFIDAVIT OF SATISFACTION: NOTIFICATION TO SECURED CREDITOR.

(a) If a secured creditor has not submitted for recording a satisfaction of a security instrument within the period specified in Section 203(a), a satisfaction agent acting for and with authority from the landowner may give the secured creditor a notification that the satisfaction agent intends to submit for recording an affidavit of satisfaction of the security instrument. The notification must include:

- (1) the identity and mailing address of the satisfaction agent;
- (2) identification of the security instrument for which a recorded satisfaction is sought, including the names of the original parties to, and the recording data for, the security instrument;
- (3) a statement that the satisfaction agent has reasonable grounds to believe that:

(A) the real property described in the security instrument is

residential real property;

(B) the person to which the notification is being given is the secured creditor; and

(C) the secured creditor has received full payment or performance of the secured obligation;

(4) a statement that a satisfaction of the security instrument does not appear of record;

(5) a statement that the satisfaction agent, acting with the authorization of the owner of the real property described in the security instrument, intends to sign and submit for recording an affidavit of satisfaction of the security instrument unless, within 30 days after the effective date of the notification:

(A) the secured creditor submits a satisfaction of the security instrument for recording;

(B) the satisfaction agent receives from the secured creditor a notification stating that the secured obligation remains unsatisfied; or

(C) the satisfaction agent receives from the secured creditor a notification stating that the secured creditor has assigned the security instrument and identifying the name and address of the assignee.

(b) A notification under subsection (a) must be sent by a method authorized by Section 103 that provides proof of receipt to the secured creditor's address for giving a notification for the purpose of requesting a payoff statement or, if the satisfaction agent cannot ascertain that address, to the secured creditor's address for notification for any other purpose.

(c) This [act] does not require a person to agree to serve as a satisfaction agent.

Comment

1. *Notification to secured creditor: content and manner of delivery.* Subsection (a) merely states the minimum requirements for an acceptable notification under Article 3. It does not prevent the satisfaction agent from providing additional information (such as a street address for the mortgaged premises or the mortgage loan number) that might assist the secured creditor in identifying the security instrument or the secured obligation.

Subsection (b) requires that the satisfaction agent must give a notification under subsection (a), by a method authorized by Section 103 that provides proof of receipt, to the secured creditor's address for notification for payoff statement requests. This requirement serves two important purposes. First, receiving the notification by a method that provides proof of receipt (such as Federal Express or certified mail, return receipt requested) helps to alert the secured creditor's administrative staff as to the potential legal significance of the notification — *i.e.*, the possibility that a third party may release the creditor's lien if the creditor fails to respond promptly. This warning facilitates the secured creditor's ability to respond promptly to the notification. Second, this requirement provides the satisfaction agent with demonstrable evidence of the satisfaction agent's efforts to notify the secured creditor.

2. *Notification to secured creditor: relation to Section 203.* Section 203(c) provides that if the secured creditor has not submitted for recording a satisfaction within 30 days of receiving full payment or performance of the secured obligation, the landowner may give the secured creditor notification of this failure — thereby triggering a 30-day grace period within which the secured creditor may submit a satisfaction for recording without incurring liability for statutory damages and attorney's fees. The notification required by Section 302 serves a different function — to alert the secured creditor to the possibility that a third party may release its security interest

However, the landowner could provide both notifications at the same time (*i.e.*, at any time on or after the 31st day following the point at which the secured creditor received full payment or performance of the secured obligation). Thus, the 30-day grace periods in Sections 203(c) and Section 302 may run contemporaneously. Moreover, the landowner could use one notification to satisfy its notification obligation under both Section 203(c) and Section 302, but only if that notification clearly and conspicuously met all of the requirements of both of those sections. For example, a notification that only demanded that the secured creditor record a satisfaction within 30 days in order to avoid liability under Section 203(c) would not be sufficient to permit a satisfaction agent to record an affidavit of satisfaction under Article 3. Likewise, a notification that contained only the information specified in Section 302(a) would not be sufficient to trigger the 30-day grace period provided by Section 203(c).

3. *Secured creditor's response to notification.* A secured creditor that receives a notification under subsection (a) can respond in one of four ways. The creditor can: (1) submit a satisfaction of the security instrument for recording within the ensuing 30 days; (2) authorize

the satisfaction agent to submit an affidavit of satisfaction for recording immediately under Section 303(a); (3) give notification to the satisfaction agent objecting that the secured obligation remains unsatisfied; or (4) give notification to the satisfaction agent that the secured obligation has been assigned, identifying the name and mailing address of the assignee. If the secured creditor fails to respond within the 30-day grace period, this Article permits the satisfaction agent to sign and submit for recording an affidavit of satisfaction as long as the satisfaction agent has reasonable grounds to believe that the secured creditor has received full payment of the secured obligation.

This Article seeks to establish a functional method for clearing title, particularly when the holder of a paid-off mortgage is defunct. If the satisfaction agent has evidence that a particular secured creditor received full payment of the secured obligation, and gives notification to that creditor at its address for payoff statement requests or, if that address is unavailable, at the creditor's address for notification for any other purpose, the satisfaction agent has complied with the requirements of Section 302(a) even if the notification is returned by the postal service as undeliverable. In that event, Section 303 would authorize the satisfaction agent to proceed to execute and submit for recording an affidavit of satisfaction.

4. *Attorney or title insurance company not obligated to agree to serve as a satisfaction agent.* This Act does not require a title insurance company or an attorney to agree to serve as a satisfaction agent. For example, if a landowner requests that a title insurance company serve as a satisfaction agent to assist in clearing the landowner's title under Article 3, and the title insurer cannot satisfy itself as to the accuracy of the statements required in the affidavit of satisfaction under Section 304, the title insurer may refuse to serve as a satisfaction agent.

SECTION 303. AFFIDAVIT OF SATISFACTION: AUTHORIZATION TO SUBMIT FOR RECORDING.

(a) Subject to subsections (b) and (c), a satisfaction agent may sign and submit for recording an affidavit of satisfaction of a security instrument complying with Section 304 if:

(1) the secured creditor has not, to the knowledge of the satisfaction agent, submitted for recording a satisfaction of a security instrument within 30 days after the effective date of a notification complying with Section 302(a); or

(2) the secured creditor authorizes the satisfaction agent to do so.

(b) A satisfaction agent may not sign and submit for recording an affidavit of

satisfaction of a security instrument if it has received a notification under Section 302(a)(5)(B) stating that the secured obligation remains unsatisfied.

(c) If a satisfaction agent receives a notification under Section 302(a)(5)(C) stating that the security instrument has been assigned, the satisfaction agent may not submit for recording an affidavit of satisfaction of the security instrument without:

- (1) giving a notification of intent to submit for recording an affidavit of satisfaction to the identified assignee at the identified address; and
- (2) complying with Section 302 with respect to the identified assignee.

Comment

1. *Authority to record affidavit of satisfaction.* A satisfaction agent may sign and submit for recording an affidavit of satisfaction in two circumstances: (1) under subsection (a)(1), if the agent properly gave notification under Section 302(a) and the secured creditor failed to reply within 30 days after the effective date of the notification; and (2) under subsection (a)(2), if the secured creditor authorizes it to do so. If, within the 30-day period following the satisfaction agent's notification, the secured creditor gives a notification to the satisfaction agent objecting that the secured obligation remains unsatisfied, the satisfaction agent has no authority to proceed under this Article and may not submit for recording an affidavit of satisfaction.

Although a secured creditor's objection may prevent the satisfaction agent from using Article 3's "self-help" satisfaction procedure, it does not shield that secured creditor from potential liability under Section 203 if the secured creditor has in fact received full payment of the secured obligation. If subsequent litigation established that the secured creditor was legally obligated to record a satisfaction (*i.e.*, because it had received and accepted full payment of the secured obligation), but failed to do so in a timely manner, the secured creditor will have violated its obligations under the Act and the landowner may recover damages as provided in Section 203.

2. *Notified creditor has assigned security interest.* In some cases, a satisfaction agent may give a notification under Section 302(a) and receive a response indicating that the security interest has been assigned. If the response identifies the name and address of the assignee, the satisfaction agent cannot use the provisions of Article 3 without giving the identified assignee a notification as required by Section 302(a) and an additional 30-day grace period in which to record a satisfaction.

SECTION 304. AFFIDAVIT OF SATISFACTION: CONTENT. An affidavit of satisfaction of a security instrument must:

(1) identify the original parties to the security instrument, the secured creditor, the recording data for the security instrument, and, if necessary for proper indexing of the affidavit, a legal description of the real property identified in the security instrument;

(2) state the basis upon which the person signing the affidavit is a satisfaction agent;

(3) state that the person signing the affidavit has reasonable grounds to believe that the real property described in the security instrument is residential real property;

(4) state that the person signing the affidavit has reasonable grounds to believe that the secured creditor has received full payment or performance of the secured obligation;

(5) state that the person signing the affidavit, acting with the authority of the owner of the real property described in the security instrument, gave notification to the secured creditor of its intention to sign and submit for recording an affidavit of satisfaction;

(6) describe the method by which the person signing the affidavit gave notification in compliance with this [act];

(7) state that:

(A) more than 30 days have elapsed since the effective date of that notification, and the person signing the affidavit has no knowledge that the secured creditor has submitted a satisfaction for recording and has not received a notification that the secured obligation remains unsatisfied; or

(B) the secured creditor authorized the person signing the affidavit to sign

and record an affidavit of satisfaction; and

(8) be signed and acknowledged as required by law for a conveyance of an interest in real property.

Comment

Affidavit of satisfaction: contents. Section 304 sets forth the information necessary for a sufficient affidavit of satisfaction. An affidavit that does not contain the information required by subsection (a) does not operate as a satisfaction of the security instrument under Section 306, even if it is accepted for recording.

Section 304 provides that an affidavit of satisfaction need not include a legal description of the real property covered by the security instrument, unless a real property description is necessary for proper indexing (such as in a jurisdiction that uses tract indexing). In a jurisdiction that uses grantor-grantee indexing, a legal description is not necessary for proper indexing and may be omitted.

SECTION 305. AFFIDAVIT OF SATISFACTION: FORM. No particular phrasing of an affidavit of satisfaction is required. The following form of affidavit, when properly completed, is sufficient to satisfy the requirements of Section 304 (a):

(Date of Affidavit)

AFFIDAVIT OF SATISFACTION

The undersigned hereby states as follows:

1. I am: [check appropriate box]

☐ an officer or a duly appointed agent of [Name of title

insurance company] (the "Company"), which is authorized to transact the

business of insuring titles to interests in real property in this state, and I have been authorized by the Company to sign and submit for recording an affidavit of satisfaction.

☐ an attorney licensed to practice law in this state and in good standing.

2. I am signing this Affidavit of Satisfaction to evidence full payment or performance of the obligations secured by real property covered by the following security instrument (the "security instrument") currently held by _____ (the "secured creditor"):

Title of security instrument:

Original parties to security instrument:

County and state of recording:

Recording data for security instrument:

[Legal description, if necessary for proper indexing:]

3. I have reasonable grounds to believe that:

- a. the secured creditor has received full payment or performance of the balance of the obligations secured by the security instrument; and
- b. the real property described in the security instrument constitutes residential real property.

4. With the authorization of the owner of the real property described in the security instrument, I gave notification to the secured creditor by _____ [method authorized by Section 103 that provides proof of receipt]

that I would sign and record an affidavit of satisfaction of the security instrument if, within 30 days after the effective date of the notification, the secured creditor did not submit a satisfaction of the security interest for recording or give notification that the secured obligation remains unsatisfied.

5. [check appropriate box]

☐ The 30-day period identified in paragraph 4 has elapsed, I have no knowledge that the secured creditor has submitted a satisfaction for recording, and I have not received notification that the secured obligation remains unsatisfied.

☐ The secured creditor responded to the notification in paragraph 4 by authorizing me to execute and record this affidavit of satisfaction.

(Signature of Satisfaction Agent)

(Notarization)

Comment

Section 305 provides a safe-harbor form that, when properly completed, satisfies the requirements of Section 304.

SECTION 306. AFFIDAVIT OF SATISFACTION: EFFECT.

(a) Upon recording, an affidavit substantially complying with the requirements of Section 304 constitutes a satisfaction of the security instrument described in the affidavit.

(b) The recording of an affidavit of satisfaction of a security instrument does not

by itself extinguish any liability of a person for payment or performance of the secured obligation.

(c) The [appropriate governmental office under the recording act of this state] may not refuse to accept for recording an affidavit of satisfaction of a security instrument unless:

(1) an amount equal to or greater than the applicable recording fees and taxes is not tendered;

(2) the affidavit is submitted by a method or in a medium not authorized by the [appropriate governmental office under the recording act of this state]; or

(3) the affidavit is not signed by the satisfaction agent and acknowledged as required by law for a conveyance of an interest in real property.

Comment

1. *Effect of recording affidavit of satisfaction.* Upon recording, an affidavit that complies with Section 304 operates as a satisfaction of the security instrument in favor of persons entitled to the benefit of the state's recording act. This ensures that the affidavit of satisfaction fulfills the Act's necessary "title-clearing" function, especially with respect to the problem caused by unrecorded mortgage assignments.

For example, suppose that Heinsz owns Blackacre, a home that he acquired via a mortgage loan from XYZ Mortgage Co. XYZ Mortgage Co. subsequently transferred the mortgage to First Bank by means of an unrecorded assignment. Heinsz believes that he paid off the mortgage to First Bank two years ago; in reality, a small balance remains outstanding, and no satisfaction was ever recorded. Heinsz contracts to sell Blackacre to Waldman. Waldman objects to the continued presence of the mortgage in Heinsz's record chain of title. On behalf of Heinsz, ABC Title Insurance Company provides to First Bank a proper notification of its intention to sign and submit an affidavit of satisfaction for recording. During the following 30 days, First Bank neither submits a satisfaction for recording nor objects that the secured obligation remains unsatisfied. Accordingly, ABC Title Insurance Company signs and records an affidavit of satisfaction complying with Section 304. Based on this affidavit, Waldman completes the purchase of Blackacre, without knowledge or reason to know of the small balance outstanding. Section 306 provides that the affidavit constitutes a satisfaction in favor of Waldman, and First Bank cannot thereafter enforce the mortgage against Waldman.

2. *Noncompliant affidavits.* An affidavit that does not substantially comply with Section

304 does not constitute a satisfaction under this Act. For example, suppose that Heinsz owns Blackacre, a home that is subject to a recorded mortgage held by First Bank. Heinsz contracts to sell Blackacre to Waldman. When a dispute arises between Heinsz and First Bank as to whether Heinsz has made full payment of the mortgage debt, Waldman objects to the continued presence of the First Bank mortgage in Heinsz's record chain of title. Heinsz then forges and records an affidavit of satisfaction purportedly signed by an authorized agent of ABC Title Insurance Company. Waldman, unaware of Heinsz's forgery, completes the purchase of Blackacre, believing the First Bank mortgage to have been satisfied. The forged affidavit does not comply with Section 304, has no legal effect, and does not operate as a satisfaction of the First Bank mortgage in favor of Waldman, even if Waldman is a good faith purchaser for value without notice of Heinsz's conduct.

3. *Grounds for rejection by recorder.* As discussed in Section 204, a recorder may appropriately reject a satisfaction document if it lacks the necessary formalities for a recordable document (such as a proper acknowledgment), if the satisfaction is not tendered with the appropriate recording fee, or if the satisfaction document is submitted in a form or medium not authorized by the recording office. However, the Act provides that recorders should not review and reject an affidavit of satisfaction based upon its substantive content or based upon the identity of the person who currently appears to be the record holder of the security instrument. Thus, in the example in comment 1 above, the Act would not authorize the recorder to reject the affidavit of satisfaction simply because the actual secured creditor (First Bank) holds the security interest by means of an unrecorded assignment.

Likewise, the recording officer may not refuse to accept an affidavit of satisfaction for recording because the affidavit does not recite the chain of assignments by which the present secured creditor acquired its interest. This provision is critical to advance the Act's objective of providing a landowner with an efficient title-clearing mechanism. In many cases, it would be either prohibitively expensive or time-consuming for the secured creditor to locate and record the complete chain of intermediate assignments of the security instrument. In other cases, intermediate assignments have been lost or intermediate assignors are defunct, making it practically impossible to reconstruct a complete record chain of assignments.

4. *Liability of obligor.* Recording of an affidavit of satisfaction under this Act has no effect upon the enforceability of the secured obligation itself. If a satisfaction agent executes and records an affidavit of satisfaction even though the secured creditor has not received full payment or performance of the secured obligation, nothing in the Act precludes the secured creditor from enforcing the secured obligation against any person liable for the obligation. Whether the secured creditor has in fact received full payment or performance of the secured obligation is governed by law other than this Act. Likewise, the Act does not preclude the secured creditor from enforcing any other security it may hold to secure payment or performance of the obligation (*i.e.*, security other than the real property described in the security instrument).

SECTION 307. LIABILITY OF SATISFACTION AGENT.

(a) Except as otherwise provided in subsection (b), a satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously or with knowledge that the statements contained in the affidavit are false is liable to the secured creditor for any actual damages caused by the recording and reasonable attorney's fees and costs.

(b) A satisfaction agent that records an affidavit of satisfaction of a security instrument erroneously is not liable if the agent properly complied with this [article] and the secured creditor did not respond in a timely manner to the notification pursuant to Section 302(a)(5).

(c) If a satisfaction agent records an affidavit of satisfaction of a security instrument with knowledge that the statements contained in the affidavit are false, this section does not preclude:

- (1) a court from awarding punitive damages on account of the conduct;
- (2) the secured creditor from proceeding against the satisfaction agent under law of this state other than this [act]; or
- (3) the enforcement of any criminal statute prohibiting the conduct.

Comment

1. *Liability of satisfaction agent: erroneous affidavit.* If a satisfaction agent erroneously executes and records an affidavit of satisfaction, the secured creditor may effectively lose the ability to enforce the security instrument as a means to facilitate its collection of the remaining balance of the obligation. For example, suppose that ABC Title Company is acting as a satisfaction agent on behalf of Heinsz, who owns Blackacre subject to a recorded mortgage held by First Bank. Because it has reasonable grounds to believe that First Bank had received full payment of the mortgage debt, ABC Title Company gives to First Bank a notification of its intention to record an affidavit of satisfaction. First Bank files a timely objection, as permitted under Section 302(a)(5)(B), because the secured obligation in fact remains unsatisfied. Because a filing clerk at ABC Title Company misfiled the objection, however, ABC Title Company believes that First Bank failed to respond to the notification. As a result, after 30 days have passed, ABC Title Company records an affidavit of satisfaction. ABC Title Company's affidavit

of satisfaction is erroneous, and Section 307(a) would permit First Bank to recover actual damages it suffers as a result of the recording, subject to the usual rules of pleading and proof. However, where the satisfaction agent's conduct is merely negligent, the court may not award punitive damages against the satisfaction agent.

Subsection (b) is intended to make clear that if a satisfaction agent properly gave notification to the secured creditor under Section 302(a), and the secured creditor failed to respond by objecting that the secured obligation remains unsatisfied, a satisfaction agent that has otherwise properly complied with the requirements of this Act is not liable to the secured creditor even if the creditor in fact had not received full payment of the secured obligation.

2. *Liability of satisfaction agent: knowingly false statements.* The availability of a self-help satisfaction remedy in Article 3 creates the risk that in some circumstances, a satisfaction agent may execute and record an affidavit of satisfaction with knowledge that the statements contained in that affidavit are false. Subsection (a) authorizes the award of actual damages and reasonable attorney's fees in the event of such wrongful conduct by a satisfaction agent. In order to further discourage such conduct, subsection (c) clarifies that in appropriate cases, a court may award punitive damages against such a satisfaction agent. Section 307(c) also preserves the applicability of other state civil law (such as a statute proscribing unfair or deceptive trade practices) or criminal law (such as perjury) against such conduct.

[ARTICLE] 4

MISCELLANEOUS PROVISIONS

SECTION 401. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 402. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. § 7001 *et seq.*) but does not modify, limit, or supersede section 101(c) of that act (15 U.S.C. § 7001(c)) or authorize electronic delivery of any of the notices described in section 103(b) of that act (15 U.S.C. § 7003(b)).

SECTION 403. EFFECTIVE DATE. This [act] takes effect on

_____.

SECTION 404. REPEALS. The following acts are repealed: [List statutes to be specifically repealed.]